



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
EDISON, NEW JERSEY 08837

NOV 24 2009

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Edward Galaimo, Ph.D.  
President and CEO  
New York Institute of Technology  
Office of the President – Tower House  
Old Westbury, New York 11568

Re: Notice of Opportunity with Respect to Action under the Toxic Substances Control Act

Dear Mr. Galaimo:

On May 19, 2009, duly authorized representatives of the United States Environmental Protection Agency (EPA) conducted an inspection of and at the New York Institute of Technology (NYIT), Central Islip Campus, located at 300 Carleton Avenue in Central Islip, New York. This inspection was conducted pursuant to Section 11 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2610, and was conducted for the purpose of determining NYIT's compliance with TSCA and the regulations promulgated pursuant to TSCA.

Based on available information, EPA believes that NYIT is in violation of the regulations relating to polychlorinated biphenyls (PCBs) codified at 40 C.F.R. Part 761 and promulgated under authority of Section 6 of TSCA, 15 U.S.C. § 2605. Specifically, EPA believes that NYIT violated the regulations regarding PCB use, storage, and recordkeeping.

Moreover, EPA believes that NYIT is using PCB Transformers that were not registered with EPA on or before December 28, 1998 in accordance with the regulations at 40 C.F.R. § 761.30. Since these transformers were not registered within the timeframe specified in the regulations, the transformers are not authorized for use and must be either removed or retrofilled until the PCB concentrations decrease to below 500 parts per million (ppm).

Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, EPA is authorized to commence civil administrative actions for the assessment of civil penalties for violations of the above-cited regulations. Consistent with the provisions set forth in the Agency's Enforcement Response Policies for violations of TSCA, the EPA may assess a penalty up to \$32,500 per day for each violation.



EPA currently anticipates issuing an administrative complaint in this matter, seeking a civil penalty in the amount of \$36,100. A more detailed description of the violations and potential penalties is included as an enclosure to this letter.

At this time, however, EPA intends to offer your institution an opportunity to demonstrate why the Agency should not proceed with an administrative enforcement action. Pursuant to 40 C.F.R. § 22.13(b), the Agency may enter into and finalize a settlement of this matter without the issuance of a formal complaint, and EPA is prepared to discuss such a possibility.

Any such settlement would include NYIT agreeing to pay a monetary penalty. However, such a settlement might involve an amount less than the \$36,100 proposed above if you were able to provide EPA with competent documentary evidence that demonstrates that a reduction in penalty is in fact warranted. The Agency might agree to a reduction commensurate with the nature, type and scope of the information provided. Such evidence should include any additional information you wish to bring to the Agency's attention regarding such factors as the nature, circumstances, extent and gravity of the violation at issue, ability to pay the proposed amount, the effect payment of the proposed penalty might have on your institution's ability to do business, and other factors that you deem appropriate for EPA's consideration in this matter. Any settlement that might be reached in this matter must be in conformance with the appropriate EPA Enforcement Response Policy.

EPA requests that you or your representative be present in this office at a mutually convenient date and time to demonstrate why EPA should not proceed with an enforcement action pertaining to this violation and/or to negotiate a settlement of EPA's claim. You may wish to be represented by legal counsel during the meeting.

I have enclosed copies of the Consolidated Rules of Practice (40 C.F.R. Part 22) and the appropriate EPA penalty policies. Also enclosed is a Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings and a copy of the EPA Supplemental Environmental Projects (SEP) Policy for your consideration. The Agency encourages the use of SEPs, where appropriate, as part of the settlement.

To arrange a time for this meeting, EPA requests that you contact Vickie Pane of my staff at (732) 321-6798 within ten working days of your receipt of this letter.

Sincerely,



Kenneth S. Stoller, P.E., QEP, DEE  
Chief  
Pesticides and Toxic Substances Branch

Enclosures



**Enclosure**  
**Violations and Penalty**

**1. Unauthorized Use of PCB Transformers**

In accordance with the regulations at 40 C.F.R. § 761.30(a)(1)(vi)(A), all owners of PCB Transformers, including those in storage for reuse, were required to register their transformers with the EPA no later than December 28, 1998. As per paragraph (a)(1)(vi)(D) of this section, a transformer owner must comply with this requirement in order to be authorized to continue using a PCB Transformer or to store the transformer for reuse.

At the time of EPA's May 19, 2009 inspection, three PCB Transformers were in use in the basement of Building 7 at NYIT's Central Islip, New York, campus. These PCB Transformers were registered with EPA on October 7, 2004.

Circumstance: 2 (major use)

Extent: Minor (amount less than 220 gallons)

Gravity-Based Penalty for this violation:

\$3,869

**2. Storage for Disposal Longer Than One Year**

In accordance with the regulations at 40 CFR § 761.65 (a)(1), any PCB waste shall be disposed of as required by subpart D within one-year from the date it was determined to be PCB waste and the decision was made to dispose of it (the date of removal from service for disposal).

At the time of EPA's May 19, 2009 inspection, four PCB Transformers were being stored for disposal in the Pump House at the NYIT's Central Islip, New York, campus. These transformers have been stored for disposal for more than one year.

Circumstance: Level 4 (minor storage)

Extent: Minor (amount less than 220 gallons)

Gravity-Based Penalty for this violation:

\$1,290



### 3. Annual Documents

In accordance with the regulations at 40 CFR § 761.180 (a), each owner or operator of a facility, other than a commercial storer or a disposer of PCB waste, using or storing at any one time at least 45 kilograms (99.4 pounds) of PCBs contained in PCB Container(s), or one or more PCB Transformers, shall develop and maintain at the facility, or at a central facility provided they are maintained at that facility, all annual records and the written annual document log of the disposition of PCBs and PCB Items. These records and annual document logs are required to be maintained for at least three years after the facility ceases using or storing PCBs and/or PCB Items in the quantities specified above, and they are required to be available for inspection by EPA representatives.

At the time of EPA's May 19, 2009 inspection, annual documents were not available for the PCB Transformers present at the NYIT's Central Islip, New York, campus.

Circumstance: Level 4 (significant record keeping)

Extent: Significant (amount 220 to 1,100 gallons)

Years assessed: 2007, 2006, 2005, and 2004 and beyond

Gravity-Based Penalty for this violation:      \$7,737 X 4 =      \$30,948

Total Gravity-Based Penalty for all violations:      \$36,107

In accordance with Agency policies regarding modifications to the relevant penalty policies, the total gravity-based penalty amount is rounded to the nearest unit of 100 dollars.

**Total Proposed Penalty (rounded off per EPA policy):**      \$36,100

#### References:

1. EPA's "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act" [September 10, 1980, in Federal Register (45 Fed. Reg. 59,770)]
2. The Civil Monetary Penalty Inflation Adjustment Rule [February 13, 2004, in Federal Register (69 FR 7121)]
3. Penalty Policy Supplements pursuant to the Civil Penalty Inflation Adjustment Rule (April 18, 1997).
4. EPA's "PCB Penalty Policy" (April 9, 1990)